Supreme Court, U.S.
FILED
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IN THE

Supreme Court of the United States

WEI ZHOU,

Petitioner

v.

MARQUETTE UNIVERSITY

Respondent

On Petition For Writ Of Certiorari
To United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

WEI ZHOU
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QUESTIONS PRESENTED

1. Whether the ORDER of Chief Judge Frank H. Easterbrook, Circuit Judge William J. Bauer and Circuit Judge John Daniel Tinder of United States Court of Appeals for the Seventh Circuit violates the Constitution of the United States, Article 3, 28 U.S.C.§1331, 28 U.S.C.§1332 and *res judicata.*

2. Whether the DECISION AND ORDER of Chief Judge Rudolph T. Randa of United States District Court, Eastern District of Wisconsin violates the Constitution of the United States, Article 3, 28 U.S.C.§1331, 28 U.S.C.§1332 and *res judicata.*

Article 3 of the Constitution of the United States defines and limits the judicial power in the United States federal system. It also enumerates nine categories of cases and controversies which the Supreme Court and lower federal courts may hear. The nine categories of cases include those called federal questions in 28 U.S.C.§1331 and those called diversity of citizenship in 28 U.S.C.§1332. My claims are federal questions and diversity of citizenship, and *res judicata* is not applicable to them.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was December 5, 2008.

No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Constitution of the United States, Article 3.
2. 28 U.S.C. §1331.
3. 28 U.S.C. §1332.

STATEMENT OF THE CASE

On December 5, 2008, the ORDER sought to be reviewed was entered by Chief Judge Frank H. Easterbrook, Circuit Judge William J. Bauer and Circuit Judge John Daniel Tinder of United States Court of Appeals for the Seventh Circuit.

Since my claims are federal questions and diversity of citizenship, hence both United States Court of Appeals for the Seventh Circuit and United States

District Court, Eastern District of Wisconsin have subject-matter jurisdiction, therefore, the judgment of United States Court of Appeals for the Seventh Circuit violates the Constitution of the United States, Article 3, 28 U.S.C.§1331 and 28 U.S.C.§1332, is absolutely wrong and must be overturned with sufficiently compelling reasons.

REASONS FOR GRANTING THE PETITION

The ORDER sought to be reviewed entered by Chief Judge Frank H. Easterbrook, Circuit Judge William J. Bauer and Circuit Judge John Daniel Tinder of United States Court of Appeals for the Seventh Circuit on December 5, 2008, violates the Constitution of the United States, Article 3, 28 U.S.C.§1331 and 28 U.S.C.§1332.

Therefore, both this Court and I have compelling reasons for granting my petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Wei Zhou

Wei Zhou

Date: December 22, 2008.

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with
Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted December 4, 2008*.
Decided December 5, 2008

Before

FRANK H. EASTERBROOK, *Chief Judge*

WILLIAM J. BAUER, *Circuit Judge*

JOHN DANIEL TINDER, *Circuit Judge*

No. 08-2695

Appendix A

WEI ZHOU,
Plaintiff-Appellant,

v.

MARQUETTE UNIVERSITY,
Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Wisconsin.

No.07-C-958

Rudolph T. Randa,
Chief Judge.

ORDER

Wei Zhou got into a dispute with Marquette University over whether he received high enough marks on an exam to remain in a Ph.D. program. He sued the university in federal court claiming breach of contract. The district court concluded that it lacked subject-matter jurisdiction and dismissed the case. We agree that the district court did not have jurisdiction over the dispute and so properly

*After examining the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. See FED. R. APP. P. 34(a)(2).

dismissed it.

Zhou was a candidate for a Ph.D. in Math. To complete the program, candidates must pass a three-part preliminary exam, but the university gives them two chances to take the test. The first time around, Zhou sat for two parts of the exam but passed only one. He alleges that a faculty member then told him that he would receive a passing grade if, on his next attempt, he could do "a little bit" more or completely "finish three or four" problems. On the second try Zhou failed both parts that he attempted (including the part that he failed the first time). Afterward, the university told him he no longer could pursue a Ph.D. but could work towards a Master's degree instead. In September 2004 Zhou and the university agreed to this arrangement in writing.

Three years later, though, Zhou sued in federal court. He claims that Marquette breached what he says was an oral contract to give him a passing grade if he answered three or four questions on the second test. The university, he adds, "forced" him to agree to give up on his Ph.D. in favor of a Master's degree, which he says violated his "human right,

civil right and freedom of expression." Zhou requested reinstatement to the Ph.D. program or the ability to re-take the exam and "about $30,000" for each year since he was kicked out of the program.

The district court agreed with the university that this lawsuit does not belong in federal court. So do we. Zhou claims that the university breached an oral contract and somehow fraudulently induced him to enter into a written contract. Contract disputes among private parties are quintessential state-law claims. *See Taake v. County of Monroe*, 530 F.3d 538, 542 (7th Cir. 2008); *City of Chi. v. Comcast Cable Holdings, L.L.C.*, 384 F.3d 901, 904 (7th Cir. 2004). And though in his complaint Zhou alludes to violations of his civil rights including his right to freedom of expression, his feeble one-line reference falls far short of what is required to state a federal claim. *See Greater Chi. Combine & Center, Inc. v. City of Chi.*, 431 F.3d 1065, 1069 (7th Cir. 2005); *Oak Park Trust & Sav. Bank v. Therkildsen*, 209 F.3d 648, 651(7th Cir. 2000); *Turner/Ozanne v. Hyman/Power*, 111 F.3d 1312 1317 (7th Cir. 1997); *Gammon v. GC Servs. L.P.*, 27 F.3d 1254, 1256 (7th Cir. 1994). As Zhou makes clear in his complaint and his brief on appeal, his gripe relates to contracts that he allegedly entered into with the university. His vague

allusions to civil liberties cannot transform these state-law claims into a federal question.

With respect to the diversity jurisdiction, federal courts may not exercise jurisdiction on this basis when both the plaintiff and the defendant are citizens of the same state. *See* 28 U.S.C. §1332(a); *Blue Cross & Blue Shield Ass'n v. Am. Express Co.*, 467 F.3d 634, 638 (7th Cir. 2006); *Andrews v. E.I. Du Pont De Nemours & Co.*, 447 F.3d 510, 514 (7th Cir. 2006). In the district court Zhou alleged that he is a "resident of Sichuan Province, P.R. China," though he provided a Milwaukee, Wisconsin, address. But he did not identify his citizenship or immigration status. These omissions are important because federal courts have diversity jurisdiction over disputes among "citizens of a State and citizens or subjects of a foreign state," but permanent-resident aliens are considered citizens both of the state where they are domiciled and their home countries. 28 U.S.C. §1332(a)(2); *see Extra Equipamentos E Exportação Ltda. v. Case Corp.*, 541 F.3d 719, 721 (7th Cir. 2008); *Intec USA, LLC v. Engle*, 467 F.3d 1038, 1043 (7th Cir. 2006). Presented with this limited information, the district court found that Zhou is a citizen of Wisconsin, and so lacked

diversity with Marquette (which is incorporated and located in Wisconsin). Zhou does not dispute these findings. Instead, in his brief he insists incorrectly that it was the district court's burden to prove that he and Marquette are not diverse. But it is up to the plaintiff who files in federal court to plead this basis for jurisdiction and establish diversity of citizenship, *see Craig v. Ontario Corp., Nos.* 06-4409, 08-1013, 2008 WL 4149718, at *3 (7th Cir. Sept. 10, 2008); *Hart v. FedEx Ground Package Sys., Inc.*, 457 F.3d 675, 679 (7th Cir. 2006), and Zhou has not done that here.

AFFIRMED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

WEI ZHOU,

Plaintiff,

Case No. 07-CV-958

-vs-

MARQUETTE UNIVERSITY,

Defendant.

DECISION AND ORDER

The *pro se* plaintiff, Wei Zhou ("Zhou"), challenges his termination from the Ph.D. program at the Department of Mathematics, Statistics and Computer Science of Marquette University. Marquette University moves for summary judgment. This motion must be granted.

Previously, Zhou filed an action in federal court

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against Dr. Gary Krenz ("Krenz"), who was the Graduate Committee Chair at the time Zhou flunked-out of the program. In the prior action, Zhou alleged violations of 42 U.S.C. § 1981 and/or Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.*. Marquette University attempted to intervene as the proper-party defendant for Dr. Krenz, but Judge Gorence denied this request for procedural reasons. Judge Gorence then dismissed the case on Dr. Krenz's motion for summary judgment. *See Zhou v. Krenz*, Case No. 05-C-839, D.45.

In the instant case, Zhou attempts to re-cast his claims against Marquette University as breach of contract claims. Zhou makes a vague reference to civil rights in his complaint, but even construing his *pro se* complaint liberally, Zhou's claims in this action are state law claims. "It is standard learning that federal question jurisdiction arises only when the complaint standing alone 'establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law.'" *Minor v. Prudential Secs., Inc.*, 94 F.3d 1103, 1105 (7th Cir. 1996) (quoting *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 27-28 (1983)). Zhou's complaint does not present a

federal question because a "contract dispute between two private parties typically does not arise 'under the Constitution, laws, or treaties of the United States...'" *Downey v. State Farm Fire & Cas. Co.*, 266 F.3d 675, 678 (7th Cir. 2001).

Theoretically, Zhou could bring his state law claims in federal court on the basis of diversity jurisdiction. *See* 28 U.S.C. §1332. However, Zhou's complaint alleges that he lives in Milwaukee, Wisconsin, so the requirement of complete diversity is not satisfied. §1332(a)(1). In his proposed findings of fact, Zhou states that he is an "adult male resident of Sichuan Province, P.R.China." Although not entirely clear, the Court takes this to mean that Zhou is a resident alien. Even so, "an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled." §1332(a). Once again, the fact that Zhou's domicile is in the state of Wisconsin controls, and he cannot proceed under the diversity statute.

All of this is to say that the Court does not have jurisdiction over Mr. Zhou's complaint. But even if it did, Zhou is not entitled to relief because his claims are barred by the doctrine of *res judicata* (claim preclusion). Claim preclusion bars not only issues that were actually decided in a prior suit, but also

those that could have been raised. *Highway J Citizens Group v. United States Dep't of Transp.*, 456 F.3d 734, 741 (7th Cir. 2006). To apply, the doctrine requires (1) a prior final judgment on the merits; (2) the same claim; and (3) the same parties or their privies. *Tartt v. Nw. Cmty. Hosp.*, 453 F.3d 817, 822 (7th Cir. 2006).

While Zhou pursues different legal theories in this case, "a claim is not an argument or a ground but the events claimed to give rise to a right to a legal remedy." *Bethesda Lutheran Homes & Servs., Inc. v. Born*, 238 F.3d 853, 857 (7th Cir. 2001). Both of Zhou's lawsuits arise out of the same event: his termination from the Ph.D. program at Marquette. It was incumbent upon Zhou to raise all possible grounds for relief in his initial lawsuit.

Finally, the fact that Zhou's previous lawsuit went forward against Dr. Krenz while the instant lawsuit is filed against Marquette University does not prevent the application of *res judicata*. In reality, the previous lawsuit against Dr. Krenz was defended by Marquette University, and Marquette University was the proper party-defendant. Dr. Krenz was obviously acting within the scope of his employment at Marquette University, so the Court has no trouble concluding that *res judicata* is appropriate in the

instant case. *See Lubrizol Corp. v. Exxon Corp.*, 871 F2d 1279, 1288 (5th Cir. 1989) (a "vicarious liability relationship between [the employer] and its employees...justifies claim preclusion").

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No. 08-1055

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WEI ZHOU,

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v.

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Respondent

PETITION FOR REHEARING

WEI ZHOU
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To comply with Rule 44.2 of the Supreme Court of the United States, the petitioner has his grounds limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented as follows:

Article 3 of the Constitution of the United States defines and limits the judicial power in the United States federal system. It also enumerates nine categories of cases and controversies which the Supreme Court and lower federal courts may hear. The nine categories of cases include those called federal questions in 28 U.S.C.§1331 and those called diversity of citizenship in 28 U.S.C.§1332.

Since the claims of the petitioner are both federal questions and diversity of citizenship, the ORDER sought to be reviewed entered by Chief Judge Frank H. Easterbrook, Circuit Judge William J. Bauer and Circuit Judge John Daniel Tinder of United States Court of Appeals for the Seventh Circuit on December 5, 2008, violates the Constitution of the United States, Article 3, 28 U.S.C.§1331 and 28 U.S.C.§1332, which is exactly a compelling reason for both the Supreme Court of the United States and the petitioner for granting the petition for a writ of certiorari.

Since the petition for a writ of certiorari should have been granted, therefore this petition for rehearing should be granted.

Respectfully submitted,

Wei Zhou

Wei Zhou

Date: April 9, 2009

No. 08-1055

IN THE

SUPREME COURT OF THE UNITED STATES

Wei Zhou – PETITIONER

VS.

Marquette University – RESPONDENT

CERTIFICATE

I, Wei Zhou do swear or declare that on this date, April 9, 2009, as required by Supreme Court Rule 44.2, the petition for rehearing is restricted to the grounds specified in Rule 44.2 of the Supreme Court of the United States and that it is presented in good faith and not for delay.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 9, 2009.

Wei Zhou

Wei Zhou